Communications Workers of America, AFL–CIO, Local 9403 (Pacific Bell) *and* Michael Lee Finerty. Case 20–CB–7726, et al.

September 5, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

This case[1] presents issues concerning the judge's approval of a series of unilateral settlement agreements and his disposition of remaining complaint allegations that rely on limitations imposed on unions by the Supreme Court's *Beck* decision[2] in collecting dues and initiation fees from nonmember unit employees pursuant to a contractual union-security clause.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order. In brief, we affirm the judge's approval of the settlement agreements, but, for the reasons set forth below and in the decision in *California Saw & Knife Works*, 320 NLRB 224 (1995), we shall dismiss the remaining complaint allegations.

The judge's decision fully describes the facts of this case. Respondent Communications Workers of America (CWA) is an international labor organization which represents approximately 558,000 employees in 2400 bargaining units in the United States and Canada. Although chiefly concentrated in the telecommunications industry, where most employees are employed by the Regional Bell Operating Companies, the remainder of the employees represented by the Respondent work mainly in the printing/publishing industry, the health care industry, or in state and local governments.

Structurally, the Respondent is divided into eight geographic districts and 1100 affiliated locals within the United States. The Respondent, rather than the districts and locals, is the certified Section 9(a) representative for all employees in the 2400 bargaining units. In this capacity, the Respondent oversees all aspects of the collective-bargaining process with industry employers, from establishing industrywide bargaining goals on such matters as compensation, benefits, job security and working conditions to the actual negotiation, administration and enforcement of bargaining agreements. Representatives from the districts and locals provide assistance to the Respondent with respect to many of these duties, especially contract negotiations and grievance-arbitration processing. In addition, the Respondent hires district organizers who are charged with organizing new bargaining units, and it employs a legal department whose attorneys are responsible for labor-relations litigation and other legal matters associated with its role as a labor organization.

The Charging Parties are not members of the Respondent, but they work in bargaining units represented by the Respondent and subject to union-security provisions in collective-bargaining agreements between their employers and the Respondent. These agreements obligate the nonmembers to pay an agency fee as a condition of employment. For example, the contract covering employees represented by the Respondent who work at Pacific Bell/Nevada Bell contains an agency shop clause requiring all employees who have not formally joined the Respondent to pay an agency fee equivalent to the dues paid by full union members.

The Respondent has established a procedure pursuant to its understanding of *Beck* which allows nonmembers, like the Charging Parties, to object to the payment of dues and fees expended by the Respondent on noncollective-bargaining activities. The mechanics of this procedure require objections to be filed during the month of May for the upcoming "fee year" that runs from July 1 through June 30. Upon receipt of the objection, the Respondent sends the objector an "advance reduction" check equal to the portion of an objector's fee year payment which the Respondent determines constitute "nonchargeable" expenses. Along with the check, the Respondent includes a disclosure report summarizing its major categories of chargeable and nonchargeable expenditures, with an explanation of how the dues reduction fee was calculated.

A single nationwide reduced fee is calculated for all objectors based on the Respondent's chargeable versus nonchargeable national expenditures, without regard to the particular bargaining unit in which an objector is employed. By way of example, the Respondent defines strike benefits as a chargeable expense requiring the financial support of all objectors, i.e., objectors employed in the unit on strike as well as objectors employed in other bargaining units in the same industry and in bargaining units in different industries. In short, the reduced fee charged to objectors does not vary according to the objector's bargaining unit, industry, or

[1] On May 11, 1993, Administrative Law Judge Burton Litvack issued the attached decision and order. The Respondent, Charging Party Chicago Tribune Company, and individual charging parties represented by the National Right to Work Legal Defense Foundation (Foundation) filed exceptions and supporting briefs. The Respondent and the Foundation filed answering briefs and the Foundation filed a reply brief.

In addition, on May 11, 1993, Judge Litvack issued a separate order (attached) dismissing an objection filed by Charging Party James S. Ritter to the calculation by the Regional Director for Region 20 of a dues reimbursement amount owed Ritter pursuant to unilateral settlement agreements between the Respondent and General Counsel. On October 27, 1993, the Board granted Ritter's request to withdraw his request that the Board review the judge's order of May 11, 1993.

[2] *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

employer. Accordingly, because the Respondent's chargeable expenses are not calculated on a unit-by-unit basis, the disclosure report that it sends to the objectors does not break down by unit the allocation of union expenditures to the chargeable versus nonchargeable categories.

Pursuant to charges filed in 16 Regional Offices of the Board on various dates from 1988 to 1991, the General Counsel issued an amended consolidated complaint against the Respondent and its affiliated Districts and Locals alleging a host of violations with respect to their *Beck* procedure for accommodating nonmember employees opposed to paying dues for expenditures unrelated to collective bargaining. Thereafter, in a series of unilateral settlement agreements between the Respondent and General Counsel, all but two of the consolidated complaint allegations of violations were resolved.[3]

The remaining unresolved allegations assert that the Respondent's *Beck* objection procedure is unlawful in that:

> (1) it fails to break down expenses into representational and nonrepresentational categories on a unit-by-unit basis in its disclosure statement to objecting non-members; and
>
> (2) it charges objecting non-member employees for representational expenses not attributable to the unit in which they are employed.

The settlement agreements provided that these two issues would be litigated on a test case basis in Case 20–CB–7726 arising out of the Respondent's Pacific Bell/Nevada Bell Telephone bargaining unit and that any violations found and remedial relief ordered by the judge would be applicable to all charging parties named in the settlement agreements.

Addressing the latter issue first, the judge concluded that unions subject to the jurisdiction of the NLRA may lawfully charge objectors for collective-bargaining expenses not directly attributable to their bargaining unit. Accordingly, he found that the Respondent did not violate its duty of fair representation by charging objectors employed by Pacific Bell/Nevada Bell for representational expenses incurred outside their bargaining unit. The judge, however, found the violation as to the first issue. Thus, notwithstanding the judge's finding that it was lawful not to *charge* for representational expenses on a unit-by-unit basis, the judge concluded that under the circumstances of this case the Respondent was required to *allocate* its representational expenses on a unit-by-unit basis. Accordingly, he found that in failing to do so by not setting forth the breakdown of its chargeable expenses on a unit-by-unit basis in the disclosure statements sent to objectors, the Respondent breached its duty of fair representation. For the reasons that follow, we adopt the judge's dismissal of the chargeability allegation, but reverse as to the allocation issue.

Subsequent to the judge's decision in this case, the Board issued its decision in *California Saw & Knife Works*, 320 NLRB 224 (1995), resolving numerous issues that arose from the holding in *Beck* prohibiting unions under the NLRA from requiring nonmember employees to support with their dues union activities not "germane to collective bargaining contract administration, and grievance adjustment." 487 U.S. at 745. With respect to the two issues presented in the instant case, the Board held that the union in *California Saw* did not act unlawfully by failing to charge or allocate its representational expenses on a unit-by-unit basis.

With respect to the chargeability issue, the General Counsel in *California Saw* had relied on *Ellis v. Brotherhood of Railway Clerks*, 466 U.S. 435 (1984), which defined the representational expenses that objecting nonmembers under the Railway Labor Act could be compelled to support as those reasonably incurred in performing the "duties of the union as exclusive representative of the employees *in the bargaining unit.*" (Id. at 448, emphasis added.) From this and other references to the bargaining unit in *Ellis*, the General Counsel in *California Saw* argued that a union's obligations under the NLRA similarly must be defined in terms of the bargaining unit and thus a union may only charge objecting nonmembers for representational expenses expended for that unit.

The Board disagreed. It noted that subsequent to *Ellis*, the Supreme Court held in *Lehnert v. Ferris Faculty Assn.*, 500 U.S. 507 (1991), a public sector case, that

> a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and national affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit. [Id. at 524.]

While cautioning that there must be "some indication" that the expenditure of an objector's fee is for services that "may ultimately inure to the benefit of the members of the local union," (id.), the Supreme Court stated that so long as such expenditures fit the definition of being "germane to collective bargaining and similar support services . . . [no] greater relationship is necessary" for the expenses to be chargeable. Id. at 527.

On this authority, the Board in *California Saw* adopted the reasoning of its administrative law judge and concluded that because the Supreme Court allows

[3] For the reasons set forth by the judge in the attached Order Regarding Proposed Unilateral Settlement Agreements, dated May 13, 1992, we affirm his approval of the settlement agreements.

public sector unions operating under First Amendment constraints to engage in cross-unit agglomeration and averaging to determine a single nationwide chargeable fee applicable to all objectors, the same practice is permissible for unions subject to the Act's duty of fair representation. Accordingly, the Board found that the union therein did not violate its duty of fair representation by charging objectors for representational expenses on other than a unit-by-unit basis.

We find the judge's analysis in dismissing the chargeability allegation in the instant case fully consistent with *Lehnert* and *California Saw*. Indeed, we agree with the judge that there is an even greater justification than in those two cases for the Respondent's practice of charging all objectors a uniform nationwide service fee because, unlike the international unions in those two cases, the Respondent here is the recognized bargaining agent for all employees. In that role, there is a stronger presumption than when a local union is the bargaining representative, that the "parent will bring to bear its often considerable economic, political, and informational resources" in support of each bargaining unit (*Lehnert*, supra at 523)—the basis upon which the *Lehnert* Court sanctioned the practice of national rather than unit-by-unit charging of representational expenses. Accordingly, we conclude, as the judge did, that the Respondent did not violate its duty of fair representation by charging objecting employees in the Pacific Bell/Nevada Bell bargaining unit for representational expenses incurred outside that unit.[4]

Contrary to the judge, however, we also find that the Respondent did not act unlawfully by failing to allocate its chargeable expenses on a unit-by-unit basis in its disclosure statement sent to objectors. In concluding that such an accounting was required, the judge emphasized the fact that the Respondent represents employees in many different industries and that it was, therefore, "difficult to believe that Pacific Bell/Nevada Bell contract negotiations, involving telecommunications employees, would have any affect [sic] upon, or would be affected by, negotiations involving the Chicago Tribune Company typographical workers bargaining unit or a bargaining unit in the health care industry." The judge distinguished the airline industry cases cited by the General Counsel,[5] noting that the courts permitted the pilots union in those cases to allocate chargeable expenses on a national basis because, unlike here, the pilots union represents employees in just one industry and it negotiates contracts directly with the various airlines rather than through locals thereby creating the situation that bargaining at one airline directly affects bargaining unit employees at the other airlines. In the absence of a similar relationship between bargaining units in the same industry, the judge concluded that "there can be no finding that representational costs, affecting one bargaining unit, will ultimately inure to the benefit of members of another bargaining unit so as to permit [the Respondent] to allocate costs on a national, multiple industry basis without violating its duty of fair representation to objecting nonmembers." We disagree.

In *California Saw*, the Board held that unit-by-unit allocation of chargeable costs was not required, notwithstanding that the Machinists union in that case, like the Respondent here, represented employees in multiple diverse industries. 320 NLRB 224, 237. It based this holding on *Price v. International Union, UAW*, 927 F.2d 88 (2d Cir. 1991), another case decided under the NLRA. The international union in that case (the United Auto Workers) utilized an accounting practice nearly identical to the Respondent's, in which it assumed that the international's nationwide allocation of chargeable and nonchargeable expenses was equivalent to the allocation for each of its almost 1200 locals. As in this case and *California Saw*, the objectors in *Price* argued that this evidentiary "local presumption" formula was unlawful because the disclosure statements they received, which incorporated the allocation formula, contained no information regarding the expenditures, if any, that were made on behalf of their bargaining unit. The *Price* court considered this argument in light of the Supreme Court's repeated observation that "'absolute precision' in the calculation of the charge to non-members is not . . . to be 'expected or required.'" *Price*, supra at 94 (citation omitted).[6] It concluded that the local presumption formula was a reasonably accurate method of calculating chargeable fees for all unit objectors and, hence, its use did not violate the duty of fair representation.

For these reasons, we similarly conclude that the Respondent's allocation formula satisfies the duty of fair representation and that the Respondent did not act unlawfully by failing to allocate representational costs on a unit-by-unit basis in the disclosure statements sent to objectors. This is not to say, however, that an objector must accept as chargeable the figure produced by the Respondent's application of the formula. As the court in *Price* pointed out (927 F.2d at 94), the figure may be contested in a subsequent challenge proceeding where the Respondent will bear the burden of proving that the local union's expenditures are chargeable to the degree asserted. But absent a challenge proceeding

[4] We agree with the judge that because the amended consolidated complaint failed to identify specific representational expenses, including litigation expenses, as having been unlawfully charged to objectors, that issue is not before us.

[5] *Crawford v. Airline Pilots Assn. International*, 870 F.2d 155 (4th Cir. 1989); and *Pilots Against Illegal Dues v. Airline Pilots Assn.*, 938 F.2d 1123 (10th Cir. 1991).

[6] See *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963); *Abood v. Detroit Board of Education*, 431 U.S. 209, 239–240 fn. 40 (1977); *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 307 fn. 18 (1986).

establishing the invalidity of the local presumption formula, we simply hold that as an *initial* matter, the Respondent's allocation formula is not, as the General Counsel has suggested, per se unlawful.[7]

ORDER

The National Labor Relations Board affirms the judge's orders approving the settlement agreements reached between the Respondent and the General Counsel, and orders that the Respondent, Communications Workers of America, AFL–CIO, as well as its affiliated Locals affected by the settlement agreements, its officers, agents, and representatives, shall take the action set forth therein.

IT IS FURTHER ORDERED that the amended consolidated complaint is dismissed in its entirety.

[7] We note that the judge suggested in his analysis that cost cannot be a factor in determining whether a union has satisfied its obligations under *Beck*. The Supreme Court has made clear, however, that cost may be a factor in determining whether a union has satisfied its duty of fair representation. "The Supreme Court has underscored that fair representation principles are vindicated by 'afford[ing] individual employees redress for injuries caused by union misconduct without compromising the collective interests of union members in protecting limited funds.'" *California Saw*, supra at 243, quoting *Electrical Workers v. Foust*, 442 U.S. 42, 50 (1979).

Veronica L. Clements, Esq. and *Eugene Tom, Esq.*, for the General Counsel.

James B. Coppess, Esq., of Washington, D.C., for the Respondents.

Hugh L. Reilly, Esq. (National Right to Work Legal Defense Foundation, Inc.), of Springfield, Virginia, for the Charging Parties.

Paul H. Derrick, Esq. (King & Ballow), of Nashville, Tennessee, for the Charging Party, Chicago Tribune Company.

James Ritter, appearing pro se.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. The unfair labor practice charges in Cases 20–CB–7726 and 20–CB–7727 were filed on September 6, 1988, by Michael Lee Finerty, an individual; the unfair labor practice charge in Case 20–CB–8752–1 was filed on March 13, 1989, by Friderich J. Kollmann, an individual; the original and first amended unfair labor practice charges in Case 20–CB–8752–2 were filed respectively on January 16 and March 13, 1990, by James S. Ritter, an individual; the unfair labor practice charge in Case 20–CB–8752–5 was filed on July 31, 1989, by William E. Peck, an individual; the unfair labor practice charge in Case 20–CB–8752–6 was filed on April 30, 1990, by Edward Palla, an individual; the unfair labor practice charge in Case 20–CB–8752–8 was filed on January 3, 1990, by Michael F. Stork, Joseph P. Kelly, and George H. Aurig Jr., individuals; the original and first amended unfair labor practice charges in Case 20–CB–8752–9 were filed respectively on October 9, 1990, and January 29, 1991, by James Cabot and Richard McLaughlin, individuals; the original and first amended unfair labor practice charges in Case 20–CB–8752–10 were filed respectively on May 23, 1989 and August 2, 1991, by James Caparoni, an individual; the unfair labor practice charge in Case 20–CB–8752–11 was filed on February 14, 1991, by Diane Dilly, an individual; the original, first and second amended unfair labor practice charges in Case 20–CB–8752–12 were filed respectively on June 3 and July 8 and 14, 1986, by Dennis L. Johnson, an individual; the original, first, and second amended unfair labor practice charges in Case 20–CB–8752–13 were filed respectively on June 3 and July 8 and 14, 1986, by Rick A. Mechling, an individual; the original, first, and second amended unfair labor practice charges in Case 20–CB–8752–14 were filed respectively on June 3 and July 8 and 14, 1986, by James A. Pogras, an individual; the unfair labor practice charge in Case 20–CB–8752–15 was filed on March 16, 1990, by Robert Browne, an individual; the unfair labor practice charge in Case 20–CB–8752–16 was filed on October 29, 1990, by the Chicago Tribune Company; the unfair labor practice charge in Case 20–CB–8752–17 was filed on April 18, 1991, by Jack Lucken, an individual; the original and first amended unfair labor practice charges in Case 20–CB–8752–20 were filed respectively on September 21 and December 27, 1989, by Robert Krom, et. al., individuals; the unfair labor practice charge in Case 20–CB–8752–21 was filed on May 6, 1991 by Lynne Hettick, an individual; the unfair labor practice charge in Case 20–CB–8752–22 was filed on October 25, 1989, by Lenny Vilensky, an individual; the unfair labor practice charge in Case 20–CB–8752–23 was filed on October 25, 1989, by Janice Vilensky. an individual; the unfair labor practice charge in Case 20–CB–8752–25 was filed on April 2, 1990, by Carolyn A. Meyer, an individual; the unfair labor practice charge in Case 20–CB–8752–26 was filed on May 18, 1990, by Janet L. Brown, an individual; the unfair labor practice charge in Case 20–CB–8752–27 was filed on April 30, 1990, by Eileen Accetta, an individual; the unfair labor practice charge in Case 20–CB–8752–28 was filed on April 13, 1987, by Richard W. Zawatzke, an individual; the unfair labor practice charge in Case 20–CB–8752–29 was filed on June 24, 1988, by Richard W. Zawatzke, an individual; the unfair labor practice charge in Case 20–CB–8752–31 was filed on August 23, 1989, by Ednoa Hill, an individual; the unfair labor practice charge in Case 20–CB–8896 was filed on August 8, 1989, by Timothy L. Lawrence, an individual; the unfair labor practice charge in Case 20–C–8967 was filed on September 20, 1989, by Jessie Utt, an individual; and the unfair labor practice charge in Case 20–CB–8968 was filed on December 18, 1989, by Ida Scott, an individual. Based upon the aforementioned unfair labor practice charges, the Regional Director of Region 20 of the National Labor Relations Board (the Board), issued an amended consolidated complaint on October 18, 1991, and an amendment to said document on April 13, 1992, alleging that Communications Workers of America, AFL–CIO (Respondent CWA or CWA), CWA Locals 1101, 1104, 1113, 1114, 1123, 13000, 4322, 4340, 4603, 7640, 9403, 9510, 9573, and 9588 (Respondent CWA Locals, Chicago Typographical Union No. 16, Printing, Publishing, and Media Workers Section of Communications Workers of America, AFL–CIO (Respondent Typographical Union), and CWA St. Louis Mailers Union No. 3 (Respondent Mailers Union), and (Respondents), engaged in acts and conduct violative of Section

8(b)(1)(A) and (2) of the National Labor Relations Act (the Act). Respondents timely filed an answer herein, essentially denying the commission of any of the alleged unfair labor practices. The above-captioned matters came to trial before me, by telephone, on April 15, 1992, and on June 15, 1992, in Washington, D.C.[1] All parties were afforded the opportunity to call witnesses and to examine and cross-examine them,[2] to offer into the record all relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The latter were filed by counsel for the General Counsel, by counsel for the National Right To Work Legal Defense Foundation, Inc., and by counsel for Respondents, and each brief has been carefully considered by me. Accordingly based upon the entire record herein, including the posthearing briefs, I make the following[3]

FINDINGS OF FACT

I. ISSUE

The issue, as framed by the pleadings, involves the General Counsel's interpretation and application of the decision of the Supreme Court in *Communications Workers v. Beck*, 487 U.S. 735, 108 S.Ct. 2641 (1986), concerning limitations, under the Act, upon a labor organization's right to expend financial core fees, which have been collected from nonmember bargaining unit employees who are represented by said labor organization. In *Beck*, relying upon *Machinists v. Street*, 367 U.S. 740 (1961), in which it held that section 2, Eleventh of the Railway Labor Act (RLA) does not permit a union to expend compelled agency fees on political causes over the objections of nonmembers, and *Ellis v. Railway Clerks*, 466 U.S. 435, 447–448 (1984), in which it held that section 2, Eleventh of the RLA only permits nonmembers to be charged for expenditures which are "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative," the Court held that Section 8(a)(3) of the Act is, "in all material respects identical" to the aforementioned provision of the RLA and that, while Section 8(a)(3) permits the collection of dues and fees from nonmember employees pursuant to a valid union security clause, it also ". . . authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" *Beck*, supra at 108 S.Ct. at 2648, 2657. Using *Ellis*, supra, as guidance, the General Counsel alleges, in the amended consolidated complaint, that Respondents engaged in conduct violative of Section 8(b)(1)(A) of the Act by failing to break down expenses into representational and nonrepresentational categories on a unit-by-unit basis in its disclosure statement to objecting nonmembers and by charging objecting nonmembers for representational expenses not attributable to the bargaining unit in which the objectors are employed. Contrary to the General Counsel, counsel for Respondents argues that subsequent Supreme Court and Circuit Courts of Appeals decisions to *Beck* establish that CWA's nationwide breakdown of representational and nonrepresentational expenses is permissible under Ellis, that the Act permits such accounting, and that practical considerations necessitate its current accounting practices.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

The parties stipulated that[4] the highest governing body within the CWA is its annual Convention of delegates. The Convention has the authority to amend CWA's constitution; establishes the labor organization's policies; adopts a budget; rules on appeals taken by members from decisions of CWA's officers, the executive board, or its locals; and elects CWA's officers. The executive board is comprised of CWA's president, the secretary-treasurer, two executive vice presidents and 12 vice presidents,[5] and, as the highest governing body within the labor organization when the Convention is not in session, it meets regularly throughout the year, administering the policies established by the Convention and making necessary decisions on various matters, including collective bargaining and strikes. The CWA president is the chief executive of the labor organization and has general authority to carry out all of its policies and programs. Also, said individual oversees all collective bargaining by the labor organization.

CWA is an international labor organization, representing approximately 558,000 employees in 2400 bargaining units in the United States and Canada. Within this country, CWA is divided geographically into eight administrative districts, with each having jurisdiction over worksites in specific states and being supervised by a district vice president, who is a member of CWA's executive board. Within each district, CWA charters locals, with the charter of each defined in terms of geographic areas and employers. The geographic area covered by a local is usually closely circumscribed, so that all worksites within a local's jurisdiction are near to the local's office or meeting hall. At present, there are approximately 1100 locals affiliated with CWA. Significantly, the international labor organization, rather than any of its districts or locals, is the recognized collective-bargaining representative, and, in this regard, some locals assist CWA in representing more than one bargaining unit.

---

[1] By an order, dated May 13, 1992, and on June 15, 1992, I approved unilateral settlement agreements in the above-captioned matters, disposing of all but two of the allegations of the amended consolidated complaint.

[2] In lieu of witnesses, the parties entered into a stipulation of facts, which will be described infra.

[3] Neither jurisdiction nor labor organization is an issue herein. As to the former, Respondents admitted all of the jurisdiction paragraphs of the amended consolidated complaint, including that Pacific Bell, Nevada Bell, AT&T Information Systems, New York Telephone Company, Bell Telephone Company of Pennsylvania, American Telephone and Telegraph Communications, Ohio Bell Telephone Company, the Chicago Tribune Company, The Pulitzer Publishing Company d/b/a The St. Louis Post-Dispatch, GTE California Incorporated, U.S. West Communications, and Wisconsin Bell, Inc., are employers engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. With regard to labor organization, Respondents admitted that each is a labor organization within the meaning of Sec. 2(5) of the Act.

[4] The recitation of facts is based upon the stipulation, which was entered into by the parties, and the attendant exhibits.

[5] CWA is divided into eight geographical districts, and each elects a vice president who is responsible for enforcing and supervising CWA's policies and programs within his or her district. In addition, a vice president represents workers in each of CWA's four departments—communications and technologies, public workers, printing publishing, and media workers, and telecommunications.

Each local elects its own officers, and CWA trains them in carrying out the full range of the labor organization's activities. Each local appoints or, in some circumstances, elects certain CWA members to act as stewards in the worksites within that local's jurisdiction. The stewards act as CWA's first level representatives, and the labor organization conducts training programs for them, covering all aspects of their work, including contract interpretation.

The parties stipulated that the largest number of employees, who are represented by CWA, are employed by the Regional Bell Operating Companies (RBOCs), which were divested from AT&T in 1984. At these companies, CWA represents 290,000 employees in 45 bargaining units including 34,000 employees in 11 bargaining units at Ameritech, 40,000 employees in seven bargaining units at Bell Atlantic, 61,000 employees in five bargaining units at Bell South, 35,000 employees in 13 bargaining units at NYNEX, 39,000 employees in one bargaining unit at Pacific Telesis (Pacific Bell and Nevada Bell), 42,000 employees in four bargaining units at Southwest Bell, and 39,000 employees in four bargaining units at U.S. West. At least 430 locals assist CWA in representing the aforementioned employees.

Besides supervising collective bargaining for the aforementioned employees, CWA's telecommunications vice president has responsibility for overseeing and coordinating collective bargaining with non-RBOC telecommunication companies, with cable television companies, and with small telecommunications contractors known as "interconnects" at which CWA is the bargaining representative for certain employees. In total, the labor organization represents 45,000 employees in 120 bargaining units at the non-RBOC companies and 8000 employees in 420 bargaining units at the cable television companies and at the interconnects. The above vice president is not on the bargaining committees for the non-RBOC companies. Approximately 280 locals assist CWA in representing the aforementioned 53,000 employees. Many of these 280 locals also assist CWA in representing employees in other industries and at other employers.

The communications and technologies vice president has responsibility for overseeing collective bargaining and contract administration within the AT&T bargaining units at which CWA is the bargaining representative for employees. The labor organization represents 94,000 employees in eight bargaining units at AT&T, and the aforementioned vice president is on the bargaining committee for these units. Approximately 450 locals assist CWA in representing AT&T employees, and many of these locals also assist CWA in representing employees in other industries and at other employers.

The public worker/health care vice president is responsible for assisting with collective bargaining and contract administration with respect to bargaining units in state and local government and in public and private health care institutions. CWA represents 94,000 employees in 310 such bargaining units. The above vice president is not on the bargaining committee for these units. Approximately 140 locals assist CWA in representing these employees, and many of these locals also assist CWA in representing employees in other industries and at other employers.

The CWA printing sector is composed of locals that were affiliated with the International Typographical Union, which merged with CWA in 1987. In the United States, the sector has jurisdiction over approximately 1140 bargaining units, with each employer constituting one unit, and covering approximately 19,000 employees. Approximately 320 locals, within the United States, assist CWA in representing these employees. Finally, approximately 6000 employees work in 180 miscellaneous bargaining units, with each employer constituting one bargaining unit, represented by CWA. These bargaining units include employees working for electrical cooperatives, telephone cooperatives, nonprofit organizations, and manufacturing facilities outside the telecommunications industry.

CWA District 9 covers California, Nevada, and Hawaii, encompasses at least 61 locals, and is geographically divided into two areas. The North, which is served by offices in Burlingame and Sacramento, California, is geographically larger, covering Northern California, Hawaii, and Nevada; while the South, with an office in Los Angeles, California, covers a larger number of represented employees. The District 9 vice president is responsible for the bargaining and nonbargaining operations of the district, and assistants help in carrying out said responsibilities. Both the North and the South areas have area directors, who supervise CWA representatives and who determine whether to take grievances to arbitration. The CWA representatives assist the area director in processing grievances and other bargaining and nonbargaining activities. In this regard, the representatives assist locals, to which they are assigned, in collective-bargaining activities and are responsible for presenting CWA's position on grievances in mediation or at arbitration. In addition to representatives, CWA employs district organizers, who are assigned the specific responsibility of organizing new bargaining units, with the assistance of the representatives. Finally, District 9 employs attorneys, who are responsible for legal matters, such as litigation, bargaining, and grievances involving complicated legal matters or contract interpretation.

With regard to collective bargaining at Pacific Bell and Nevada Bell, which is typical of any bargaining for CWA represented units, the parties stipulated that each company is a wholly owned subsidiary of Pacific Telesis, a publicly held corporation which was incorporated in anticipation of the AT&T divestiture. Subsequent to the divestiture, Pacific Bell and Nevada Bell basically provided the same services as previously provided by Pacific Telephone and Telegraph and Nevada Bell Telephone and continued to employ the same people, who continued to be represented by CWA. Approximately 8 months before the commencement of RBOC contract negotiations, CWA holds a telecommunications industry bargaining conference, attended by CWA officers, the presidents of those locals with jurisdiction over worksites in the industry, and their staff members. At said meeting, CWA staff presentations are made on economic and bargaining trends and those present adopt industrywide bargaining goals on such matters as compensation, benefits, job security, and working conditions. Subsequently, the Pacific Bell/Nevada Bell bargaining council, which has a chairperson appointed by the District 9 vice president and is comprised of representatives from each local with members within the Pacific Bell/Nevada Bell bargaining unit, meets to formulate CWA's positions for the upcoming negotiations. The council will consider the goals established by the industrywide conference and the results of a survey of the membership in formulating

a position.[6] Formal contract negotiations are conducted by a five or six person bargaining committee composed of one or two individuals, who are appointed by the District 9 vice president, and four employees. During the bargaining, the CWA research department assists the bargaining committee in drafting proposals and counterproposals and in formulating information requests. With regard to a possible strike, Pacific Bell/Nevada Bell bargaining unit members must vote in favor of such action, and the CWA executive board then must indicate its approval. In the event of a strike, CWA provides financial assistance to the strikers. Finally, with regard to strikes, the executive board has the authority to terminate a strike.

As to enforcement of the most recent collective-bargaining agreement between CWA and Pacific Bell/Nevada Bell, which is typical of the contract enforcement process at CWA represented units, the contract provides a three-step procedure for disciplinary grievances and a two-step procedure for contract interpretation grievances. Grievances are usually filed by stewards and presented to the supervisor, who is responsible for the challenged action. At each succeeding step of the procedure, new representatives usually become involved for CWA and for the company, and, at the final step, CWA is represented by the local's president or his designee. If the grievance remains unresolved, it is sent to District 9 which determines whether to request arbitration. In this regard, a CWA representative makes a recommendation to the northern or southern area director, who decides whether or not to seek arbitration[7] If arbitration is requested, the matter is assigned to a CWA representative. This individual will attempt to settle the grievance by meeting with Pacific Bell/Nevada Bell officials. If settlement is not feasible and, in the case of disciplinary grievances, if mediation is unsuccessful, CWA pays the costs of presenting the grievance in arbitration and shares the cost of the arbitrator with management. Occasionally, when the employer refuses to comply with an award or a dissatisfied grievant claims that CWA breached its duty of fair representation, litigation may result. In this event, the CWA general counsel assigns an attorney to represent the labor organization, and CWA pays the cost of litigation.

The crux of the instant matter is the calculation of the reduced agency fee under CWA's objection procedure. As to this, the parties stipulated that the Pacific Bell/Nevada Bell collective-bargaining agreement contains an agency shop provision which requires employees, who have not joined the labor organization and thus would not have to pay union dues, to pay an agency fee (1.3 percent of the employee's basic wage) equal to normal union dues. Just under half of a nonmember employee's agency fee payment goes to CWA, and just under half goes to the local with jurisdiction over the fee payer's worksite. Most nonmember employees execute dues-checkoff authorizations and have their agency fees paid by deductions from their paychecks. Agency fees deducted in this manner are forwarded by Pacific Bell/Nevada Bell directly to CWA's headquarters. CWA thereupon retains its portion of a nonmember employee's fee and remits the local's portion of the fee to the local with jurisdiction over the employee's worksite. For those nonmember employees who pay their fees directly to their local, the latter retains its portion and remits the CWA's portion to CWA.

CWA's procedure for handling *Beck* objections, filed by nonmember agency fee payers, works on an annual basis. Typically, a nonmember will file an objection during the May window period, and his agency fee will be reduced for the following July-June fee year. However, rather than adjust the amount of fees deducted form the objector's pay or the amount collected by the objector's local, CWA sends the objector an advanced reduction check, which represents CWA's determination of what portion of the objector's fee payments would go for nonchargeable activities if the objector pays the normal fee for the entire July through June fee year.[8] At issue herein is the fact that CWA's allocation of expenses between those that are chargeable to objectors and those that are not chargeable is based on all CWA expenditures without regard to the bargaining unit directly involved. For example, benefits paid to CWA-represented employees on strike in support of CWA contract demands would be counted as chargeable both for objectors employed in the unit on strike and for objectors employed in other bargaining units in the same industry and in bargaining units in different industries. Similarly, the costs of a lawsuit to enforce an arbitration award would be counted as chargeable for objectors employed in the bargaining unit in which the arbitrated grievance was filed as well as for objectors employed in other bargaining units and in other industries. In sum, the fee reduction percentage does not vary according to the objector's bargaining unit, industry, or employer.[9] Finally, under the definition of chargeable expenditures presently applied by CWA, litigation costs are treated as chargeable only if the litigation is directly related to collective-bargaining agreements or CWA's bargaining rights, defending the labor organization against charges of unfair representation, or associational maintenance. As with all other chargeable expense allocations, CWA does not break down its litigation costs on a bargaining unit basis. Under CWA's definition, all other litigation is treated as nonchargeable.

B. *Analysis*

As stated above, the remaining issues in the above-captioned cases concern Respondent's practices of allocating expenses, between those that are not chargeable to nonmember employees and those that not chargeable, based upon all CWA expenditures without regard to the bargaining unit directly involved and of charging objecting nonmembers for representational expenses not directly attributable to the bargaining unit in which the objectors are employed. In his

[6] The stipulation of facts is silent as to whether CWA's contract demands are the same in bargaining with each of the RBOCs or as to whether a new collective-bargaining agreement with one forms the basis for bargaining with the others. The same, of course, is true for other industries.

[7] If the area director decides against seeking arbitration, his decision may be appealed to the District 9 vice president and, if the decision is affirmed, it may be appealed to the CWA Convention.

[8] Thus, if CWA has calculated that 15 percent of its expenditures are not chargeable to objectors and the objector's normal yearly agency fee would be $300, CWA would send that person a check for $45 at the start of the July through June fee year.

[9] There is nothing in the stipulation of facts as to the amount of the agency fees charged to nonmember employees and, specifically, as to whether the amount varies within industries and between industries.

posthearing brief, counsel for the General Counsel notes that, given CWA's allocation procedure, its disclosure statements to objectors contain no information regarding expenditures directly related to an objector's own bargaining unit, and, in stead, breaks down expenditures into those incurred by Respondent CWA in representing thousands of employees in different bargaining units in different industries throughout the United States and Canada. Therefore, counsel argues, the information leaves the objector without knowledge as to the cost of negotiating and administering his own collective-bargaining agreement. In these circumstances, counsel further argues, it is impossible for the objector to determine whether the percentage by which his dues have been reduced is reasonable and whether a challenge to the percentage might be successful, and the objector must pay for services seemingly irrelevant to the contract under which he or she receives wages and benefits. Accordingly, counsel for the General Counsel argues, Respondent CWA's failure to furnish a unit-by-unit breakdown to objectors and its procedure of charging nonmember employees for representational expenses not attributable to their own bargaining unit represent a breach of Respondents' duty of fair representation owed to nonmembers and are violative of Section 8(b)(1)(A) of the Act.

Recognizing that there is no case precedent under the Act, the legal basis for the General Counsel's theory, underlying the amended consolidated complaint allegations, is *Ellis v. Railway Clerks*, supra. In that seminal decision, involving section 2, Eleventh of the RLA, which authorizes union shop agreements in interstate transportation industries, having previously concluded, in Machinists v. Street, supra, that said provision can not be utilized by a union to expend compelled agency fees on political causes and, in *Railway Clerks v. Allen*, 373 U.S. 113, 121 (1963), that, under section 2, Eleventh, chargeable union expenditures were those "germane to collective bargaining," the Supreme Court was asked to delineate the line between chargeable and nonchargeable union expenditures. The Court first noted that Congress' justification for authorizing the union shop, under the RLA, was ". . . the desire to eliminate free riders—employees in the bargaining unit on whose behalf the union was obliged to perform its statutory functions, but who refused to contribute to the cost thereof." *Ellis*, supra at 447. The Court, then, defined the representational activities for which objecting nonmember employees may be compelled to pay pursuant to a valid union shop provision:

> [W]hen [nonmember employees] object to being burdened with particular union expenditures, the test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective-bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as the exclusive representative of the employees in the bargaining unit.

Id. at 448. Later in *Ellis*, after analyzing other challenged union expenditures,[10] the Court explained that organizing expenditures are not chargeable to nonmember employees as "[W]here a union shop provision is in place and enforced, all employees in the relevant unit are already organized, by definition, therefore, organizing expenditures are spent on employees outside the collective-bargaining unit already represented" and that, while litigation expenditures, which directly concern bargaining unit members are chargeable, "the expenses of litigation not having . . . a connection with the bargaining unit are not to be charged to objecting employees." Id. at 452–453. From the foregoing, counsel for the General Counsel argues that, as regards the RLA, the meaning of Ellis is that a union's obligations must be defined in terms of the bargaining unit and, therefore, it may only charge objecting nonmember employees for representational expenses expended for that unit.

In *Communications Workers v. Beck*, supra, the first—and, to date, only—case, involving a labor organization's right to expend financial core fees under Section 8(a)(3) of the Act, to reach the Supreme Court, 20 nonmember employees challenged CWA's use of their agency fees for purposes other than collective bargaining, contract administration, or grievance adjustment. While not asked to define which types of expenditures could be charged against nonmember employees' fees under said provision, the Court applied the Ellis standards to Section 8(a)(3) and Ellis's rationale in reaching its result. Thus, initially concluding that the latter provision is, "in all material respects identical" to section 2, Eleventh of the RLA (108 S.Ct. at 2648), the Court continued, finding that, in enacting the RLA provision, Congress did not invest unions with unlimited power to expend exacted money and that:

> we have since reaffirmed that "Congress" essential justification for authorizing the union shop' limits the expenditures that may properly be charged to nonmembers under Section 2, Eleventh to those "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Ellis v. Railway Clerks*. Given the parallel purpose, structure, and language of Section 8(a)(3), we must interpret that provision in the same manner. Like Section 2, Eleventh, Section 8(a)(3) permits the collection of "periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership" in the union, and . . . was designed to remedy the inequities posed by "free riders" who would otherwise unfairly profit from the [Act's] abolition of the closed shop. In the face of such statutory congruity, only the most compelling evidence could persuade us that Congress intended the nearly identical language of these two provisions to have different meanings.

Id. at 2652–2653. Based upon the above-quoted language, counsel for the General Counsel argues that, "[B]ecause *Beck* directly analogized Section 8(a)(3) of the Act to Section

[10] Costs attendant to conventions, which determined as being "essential to the union's discharge of its duties as bargaining agent," social activities, and publications, concerning collective bargaining, contract administration, and employee rights, were deemed, by the Court, to be chargeable expenses.

2, Eleventh of the RLA, the strict bargaining unit standard applied in *Ellis* must likewise be applied under the Act as to extra-unit expenditures."

Counsel for Respondents concedes counsel for the General Counsel's point that "[*Ellis's*] statement of the general standard of chargeability in the [RLA] context applies in the [context of the Act] . . . as well . . ."[11] however, he disagrees that *Ellis* requires unit-by-unit accounting of chargeable expenses or the charging of objecting nonmember employees for only those representational expenses directly attributable to the bargaining unit.

Respondents' counsel argues that, in a more recent decision[12] of the Supreme Court, *Lehnert v. Ferris Faculty Assn.*, 111 S.Ct. 1950, 137 LRRM 2231 (1991), the Court clarified its above-described bargaining unit language in *Ellis* and, in so doing, refuted the General Counsel's interpretation of that decision. At the outset, prior to examining the Supreme Court decision in *Lehnert*, I consider it necessary to analyze the underlying Sixth Circuit Court of Appeals decision, reported at 881 F.2d 1388 (6th Cir. 1989), and the opinions therein regarding the *Ellis* bargaining unit language The plaintiffs were faculty members at a publicly financed college[13] and in a bargaining unit, represented by the defendant, a union affiliated with state and national unions. None of the plaintiffs were members of the union and, pursuant to a union-security clause, paid an agency fee to the defendant, portions of which were paid to its state and national organizations. The case arose after the plaintiff faculty members objected that certain of the charges to the agency fee were improper under the standards of *Ellis* and *Abood*, supra, and, as does the General Counsel herein, they argued to the Sixth Circuit that *Ellis* meant that certain of the union's expenditures were nonchargeable as they were for services to employees in other bargaining units. While the dissenting judge agreed that "allowing the union to exact dues from [the objectors] to pay expenses unrelated to bargaining unit negotiations or grievances unjustifiably expands the holding . . . in *Ellis*" (881 F.2d at 1395), the majority found this interpretation of *Ellis* "untenable" as the Supreme Court therein found certain union expenses, such as the national convention and entertainment costs, to be chargeable even though other bargaining units participated in and benefited from them (Id. at 1393). Therefore, it appears that, as *Lehnert* came before the Supreme Court, one aspect of the General Counsel's allegations, charging objecting nonmembers for representational expenses not attributable to the bargaining

[11] While there is probably merit in the argument that the *Ellis* standards, which apply in the RLA context, will apply in cases, as herein involved, arising under the Act, such is not an absolute certainty. Thus, one may legitimately question the assumption that what is accepted as true in the transportation industry is likewise true in an industrial, retail, or construction context. For example, the Supreme Court was able to find organizing costs not chargeable in the railroad industry in part based on testimony that the industry is entirely organized and that the organizing of employees in a bargaining unit will result in only an "attenuated" benefit to employees in another unit. *Ellis*, supra at 451–452 and fn. 12. In contrast, it is the common situation, in the industrial context, that represented employees of one employer will be affected by the organizing of employees of a competitor.

[12] Subsequent to *Ellis*, the United States Court of Appeals for the Fourth Circuit decided *Crawford v. Airline Pilots Assn.*, 870 F.2d 155 (4th Cir. 1989). Therein, a group of nonmember pilots challenged several expenditures of the Airline Pilots Association (ALPA) as not being germane to collective bargaining and, therefore, not chargeable to agency fee payers on the grounds that said expenses were outside the immediate bargaining unit and also challenged the ALPA's allocation of chargeable expenses on a national basis rather than on a unit-by-unit basis. The court found that ALPA could lawfully charge the nonmember pilots for expenses not directly incurred for their bargaining unit and allocate chargeable expenses on a national basis and that *Ellis* did not require a contrary result. Thus, the court found that ALPA has no locals; that the national union negotiates contracts with the various airlines for the pilots of whom it is the exclusive bargaining representative; that all fees are paid directly to the national union; that bargaining policies are established by the national officers, who negotiate and approve all collective-bargaining agreements; and that, in those circumstances, the objecting nonmembers could not show they did not benefit from outside the immediate bargaining unit expenses. Moreover, the court concluded that *Ellis* did not support the restrictive reading which the objecting nonmembers assigned to it. Thus, the court found that the Supreme Court had analyzed types of union expenditures, but "it did not decide how a national union must allocate the expenditures that are germane to bargaining among the bargaining units it represents." 870 F.2d at 158. The court noted that the Supreme Court found certain types of expenditures, not limited to individual bargaining units, chargeable, including national convention costs. In the above circumstances, the court found that ALPA practices satisfied the *Ellis* test.

[13] *Lehnert* involved public sector employees. In two prior decisions, *Abood v. Detroit Board of Education*, 431 U.S. 209 (1976), and *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), the Supreme Court considered the rights of public sector nonmember employees under union-security clauses. Thus, in *Abood*, the Court upheld the constitutionality of the same union-security clause, at issue in *Lehnert*, "thereby approving the union or agency shop in the public sector." *Lehnert*, 881 F.2d at 1390–1391, and, in *Hudson*, after citing *Ellis* for the proposition that the union could not constitutionally collect from dissenting nonmember employees any sums for the support of ideological causes not germane to its duties as the employees' collective-bargaining representative, the Court examined the constitutionality of the union-security clause procedures adopted by a public employee union for protecting the right of nonmembers, who wished to object to the uses of their agency fees. For purposes herein, the significance of *Abood* and *Hudson* is that, having arisen in public sector, the Court was faced with First Amendment concerns. While *Ellis* involved construction and interpretation of the RLA and, therefore, statutory considerations, as in the public sector cases, the Court also considered whether the expenses were chargeable under the First Amendment. Id. at 455–457. Contrary to how it decided the RLA and public sector cases, stating that "[W]e need not decided whether the exercise of rights permitted, though not compelled, by Section 8(a)(3) involves state action," the Court, in *Beck*, avoided discussion of any First Amendment issues. *Beck*, supra at 2656. This silence of the Supreme Court, in *Beck*, is significant. Thus, in *Price v. Auto Workers*, 927 F.2d 88 (2d Cir. 1991), issued subsequent to *Beck* and decided under Sec. 8(a)(3) of the Act, the court was asked to decide the validity of a rebate procedure for the reimbursement of portions of agency fees to nonmember objectors, and it concluded that the union-shop provision was a product of private negotiations. Therefore, any constitutional claims were invalid due to the absence of state action and none of the accompanying "heightened procedural safeguards" were necessary. Rather, the court held, the only requirement was that the labor organization's procedures met the statutory duty of fair representation, specifically that they not be arbitrary, discriminatory, or implemented in bad faith. *Price*, supra.

unit, quite clearly constituted the main issue before the Court.

Writing for the majority of the Court, Justice Blackmun characterized the nonmember objectors as asserting that "[T]he local union may not utilize dissenters' fees for activities that, though closely related to collective bargaining generally, are not undertaken directly on behalf of the bargaining unit to which [they] belong and stated that such a proposition is "foreclosed" by prior decisions. *Lehnert*, 137 LRRM at 2326. Later, while acknowledging that the Court has consistently examined whether nonideological expenses are 'germane to collective bargaining," apparently directing his comments to the plaintiffs' narrow interpretation of *Ellis*, Justice Blackmun stated that "[W]e have never interpreted that test to require a direct relationship between the expense at issue and some tangible benefit to the dissenter's bargaining unit as well" and that "[T]o require so close a connection would be to ignore the unified-membership structure under which many unions . . . operate." Id. at 2327. Then, noting that affiliation with a national union results in the availability of resources when the local is in need, Justice Blackmun stated that the portion of the affiliation fee, which contributes to this "pool of resources," is assessed for the entire bargaining unit's protection "[I]f not actually expended on that unit in any particular . . . year" and that "[T]he Court recognized as much in Ellis." (Emphasis added.) Id. At this point in the decision, Justice Blackmun clarified any ambiguities, created by Ellis, regarding the chargeability of expenses outside the objectors' bargaining unit:

> We therefore conclude that a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its . . . national [affiliate], even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit. This conclusion, however, does not serve to grant a local union carte blanche to expend dissenters' dollars for bargaining activities wholly unrelated to the employees' in their unit. There must be some indication that the payment is for services that may ultimately enure to the benefit of the members of the local union by virtue of their membership in the parent organization. We conclude merely that the union need not demonstrate a direct and tangible impact upon the dissenting employees' unit.

Id. Finally, continuing to write for the majority, Blackmun discussed whether certain specified expenses, such as a public education fund, were chargeable to objectors. Then, writing for the Chief Justice, Justices White and Stevens, and himself, Justice Blackmun discussed litigation expenses, restating the Ellis view that "extra-unit litigation" was akin to nonchargeable lobbying and that "when unrelated to an objecting employee's unit, such activities are not germane to the union's duties as exclusive bargaining representative." *Lehnert*, supra at 2339.

Two courts of appeals decisions, subsequent to Lehnert, are significant for proper resolution of the instant issues. In *PAID v. Air Line Pilots Ass.*, 938 F.2d 1123 (10th Cir. 1991), involving Section 2, Eleventh of the RLA, 21 United Airlines pilots, who were not members of the ALPA and who paid agency fees pursuant to a union shop provision, argued that the union impermissibly charged them for expenses incurred in activities at other airlines, that there were inadequate procedures for challenging the determinations of their fees, and that its nationwide accounting practice for determining each nonmember's agency fee ("[C]ombining and averaging expenses from all bargaining units rather than by charging employees in each specific bargaining unit only for expenses incurred in representing that unit) was improper. Noting that the substance of the 21 pilots' contentions was that the Supreme Court, in *Ellis*, supra, had made clear that expenses incurred by a union outside of a particular bargaining unit are not considered germane to collective bargaining insofar as the employees in that unit are concerned, the court stated that the above-described *Lehnert* decision clarified whatever ambiguities existed in *Ellis* regarding expenses incurred by a union outside a particular bargaining unit; that the only connection required is that 'there must be some indication that the payment is for services that may ultimately enure to the benefit of the members of the local union . . :" and that that part of a local's affiliation fee which contributes to the pool of resources potentially available to the local is assessed for the bargaining unit's protection, even if not actually expended on that unit in any particular membership year. *PAID*, supra at 1127–1128. Accordingly, noting the record evidence of the effect that negotiations at one airline had upon others, the court concluded that, pursuant to section 2, Eleventh, the union properly charged the 21 pilots for negotiating and administrative expenses outside their airline's bargaining unit and that, given the relationships inherent in ALPA's operations, with a contract negotiated on behalf of one ALPA unit acting as "a bargaining tool" for another unit, the practice of "determin[ing] the plaintiff's agency fee by pooling the negotiating expenses of these units and dividing the costs among the represented employees" does not run afoul of Ellis." Id. In the latter regard, the court further noted that the spreading of administrative costs contributes to the "pool of resources potentially available to each affiliated bargaining unit." Id. at 1129. The second post *Lehnert* decision, *Kidwell v. Communication Workers*, 946 F.2d 283 (4th Cir. 1991), also involving section 2, Eleventh of the RLA, was filed by union members, who attacked the extra bargaining unit expenses, which comprised a portion of their union dues. Insofar as is pertinent herein, one aspect of the members' allegations concerned categories of chargeable expenses and an argument that their union used a forced cross-bargaining unit subsidization concept rather than basing the charges on the actual bargaining unit. Dismissing the plaintiffs' argument, the court, citing *Lehnert* with regard to "cross-subsidization," stated, "*Lehnert* found that 'a local bargaining representative may charge objecting employees for their pro rata share of the costs associated with otherwise chargeable activities of its state and local affiliates, even if those activities were not performed for the direct benefit of the objecting employees' bargaining unit.'" *Kidwell*, supra at 304.

Adhering to his interpretation of *Ellis* and contrary to counsel for Respondent, counsel for the General Counsel contends that nothing in the language of the Supreme Court, in *Lehnert*, mandates dismissal of the amended consolidated complaint allegations herein involved. Rather, counsel argues, *Lehnert* merely involved the chargeability of only that portion of a nonmember's agency fee which constituted per

capita payments to state and national organizations, and, therefore, it should be narrowly construed in a manner limiting the decision to its facts. I disagree. At the outset, of course, there is simply nothing in Justice Blackmun's decision, in *Lehnert*, limiting its meaning to the facts of that particular case. Contrary to counsel for the General Counsel, in light of my above discussion of that decision, I believe that everyone involved, including the litigants, the judges of the Sixth Circuit Court of Appeals, and the Justices of the Supreme Court, understood that the central issue was the meaning of the assertedly ambiguous language of the Court in *Ellis* and that such was addressed, in detail, by all. In particular, I believe that Justice Blackmun's opinion explicitly set forth the majority's explication of the broad meaning of the *Ellis* decision and such was his clear and obvious intent. Support for my view is found in the subsequent decisions of the Courts of Appeals in *PAID*, supra, and *Kidwell*, supra. As I delineated above, both courts interpreted *Lehnert* as broadly defining the meaning of *Ellis*, and neither considered *Lehnert* as having a more limited, factual focus. With regard to *PAID*, counsel for the General Counsel argues that, inasmuch as the structure of the ALPA is unique (with no locals, with all dues and fees paid to a national organization which negotiates all collective-bargaining agreements, and with national officers), section 2, Eleventh decisions involving that union are of limited precedential value. While I believe that counsel, to a certain extent is correct, I note that the court, in *Kidwell*, interpreted *Lehnert* in the same broad manner, and there is nothing in the record to establish that the union, involved therein, was structured similarly to the ALPA. Finally, counsel for the National Right to Work Legal Defense Foundation, who supports the General Counsel's view of *Ellis*, argues that the bargaining unit concept is at the heart of the Act and that the Board and the Supreme Court, in dealing with issues related to collective bargaining and the duty of fair representation under the Act, have always focused upon the concept of the appropriate unit or the bargaining unit. Counsel is, of course, correct that the Board and the courts, including the Supreme Court, have traditional stressed the concept of appropriate unit in bargaining and duty of fair representation cases; however, there is no Board decisional law on the exact points at issue herein, and Justice Blackmun's language, in *Lehnert*, gave a broad meaning to the Court's language in *Ellis*. In these circumstances, while I believe that the General Counsel's stated view of *Beck*, supra, is correct—that, given the statutory equivalency of section 2, Eleventh of the RLA and Section 8(a)(3) of the Act, the Supreme Court's decisions defining the scope and meaning of the former are binding upon similar issues relating to the latter and that no matter how distant from the traditional view of the Act, I also believe that dictates of *Lehnert* must govern in considering issues arising under *Beck*.

Utilizing the above principles, I find no merit to the General Counsel's contention that Respondents breached their duty of fair representation by charging objecting nonmembers for representational expenses not attributable the unit in which said objectors are employed. As explained by the Supreme Court, in *Lehnert* and as set forth above, it "never interpreted" its prior holdings to "require a direct relationship between the expense at issue and some tangible benefit to the dissenters' bargaining unit;" rather, the Court merely requires that the fee be for services that ". . . ultimately enure to the benefit of the members of the local union." Accordingly, I view *Beck*, supra, as permitting a labor organization, which is party to a collective-bargaining agreement containing a union security clause enacted pursuant to Section 8(a)(3) of the Act, consistent with the guidelines established in *Lehnert*, to charge nonmember bargaining unit employees for representational expenses not directly attributable to their own bargaining unit. That this conclusion is correct is illustrated by the internal structure of CWA. Thus, the national union acts as the recognized bargaining representative for all employees; the labor organization's president is responsible for all collective bargaining; CWA holds telecommunications industrywide conferences to discuss nation-wide bargaining goals; the CWA research department assists local bargaining committees in drafting contract proposals and counterproposals; CWA's executive committee must approve all strikes and terminations of strikes; and CWA provides financial assistance to strikers. Thus, surely a portion of each nonmember's agency fee contributes to the "pool of resources" potentially available for the protection of each bargaining unit. Id. at 2327. In these circumstances, as Respondent CWA is the exclusive bargaining representative of employees in the bargaining unit, of which Michael Lee Finerty is a member, as a general practice, it did not breach its duty of fair representation, in violation of Section 8(b)(1)(A) of the Act, by charging him for representational expenses[14] incurred outside his Pacific Bell/Nevada Bell bargaining unit, and I shall recommend that paragraph E11(i) of the amended consolidated complaint be dismissed.[15]

As to whether Respondent CWA violated Section 8(b)(1)(A) of the Act by allocating chargeable and nonchargeable expenses based on all its expenditures and failing to break down its expenditures into representational and nonrepresentational categories on a unit-by-unit basis, it may be persuasively argued that, under the Act, a labor organization's duty of fair representation, which is owed to objecting nonmembers, normally includes keeping them informed as to the cost of negotiating and administering the collective-bargaining agreement, which establishes their wages and benefits. However, there is, of course, no case precedent, under the Act, on this point, and neither *Ellis* nor *Lehnert* directly concerns this issue. Rather, as the court noted in *Crawford*, supra, the Supreme Court cases have involved the types of expenditures, which can be charged against nonmembers' fees, and not how a collective-bargaining representative must allocate representational expenses. Nevertheless, as I believe such are applicable in similar cases under the Act, certain discernable principles in *Ellis* and in *Lehnert* mandate the conclusion that a labor organization does not, in all cir-

[14] The chargeability of specific representational costs, such as contract negotiation or administration costs involving a bargaining unit in another industry, is not at issue herein. As the amended consolidated complaint allegation appears to have been pled in the abstract, I have decided it in that manner.

[15] Counsel for the General Counsel requests that, given the factual stipulation that Respondent CWA charges objecting nonmembers for the cost of litigation expenses, in connection with collective bargaining, which have been incurred outside their bargaining unit, I find that such practice is violative of the Act. Inasmuch as such is not specifically alleged as an unfair labor practice in the amended consolidated complaint, I shall decline to do so.

cumstances, act in breach of its statutory duty of fair representation to objecting nonmembers by not allocating chargeable expenditures on unit-by-unit basis. Thus, in *Ellis*, the discussion of such expenditures was not limited to individual bargaining units, and, in Crawford, supra, the court stated that "[T]he distinction the [Supreme] Court drew was between the types of expenditures—not whether the cost should be allocated to the specific unit in which the employees worked." Id. at 159. The Supreme Court elaborated on this point in *Lehnert*, stating that it had never interpreted the test for germane expenses to require a direct relationship between the expense at issue and some tangible benefit to the objector's bargaining unit. *Lehnert*, supra at 2327. It follows, I believe, that the only such connection, which the Court would require, is that the expense must "ultimately enure to the benefit" of the objector's bargaining unit. Id. at 2328.

From the foregoing, I am convinced that, as under the RLA, in certain circumstances, the Act permits nationwide cost allocations of representational expenses. Thus, in light of the *Lehnert* standards, given that the Airline Pilots Association negotiates contracts with the various airlines directly rather than through locals, that bargaining policies are established by national officers, who must approve all negotiations and contracts, and that bargaining at one airline is directly affected by, and directly affects, bargaining at other airlines, the Tenth Circuit Court of Appeals correctly interpreted *Ellis* and *Lehnert* as permitting the ALPA to pool the representational expenses of its various bargaining units and to divide the costs among the represented employees. *PAID*, supra, and I think the same result would hold under the Act. However, while CWA asserts that, as a national labor organization, it, likewise, should be allowed to continue to allocate representational costs on a national rather than unit-by-unit basis, there is a significant representational difference between the two organizations. The stipulated evidence herein is that CWA represents thousands of employees in many different industries. Thus, while one justifiably may argue, in regard to the ALPA, which represents employees in just one industry, that whatever affects bargaining unit employees at one company would have the identical effect upon bargaining unit employees at another company, the identical argument carries little, if any, sway with regard to CWA, which represents employees in many different industries. Put another way, it is difficult to believe that Pacific Bell/Nevada Bell contract negotiations, involving telecommunications employees, would have any affect upon, or would be affected by, negotiations involving the Chicago Tribune Company typographical workers bargaining unit or a bargaining unit in the health care industry. Absent the relationship existing between bargaining units in the same industry, as in the ALPA situation, there can be no finding that representational costs, affecting one bargaining unit, will ultimately enure to the benefit of members of another bargaining unit so as to permit CWA to allocate costs on a national, multiple industry basis without violating its duty of fair representation to objecting nonmembers. Counsel for Respondents argues that it would be impossible to identify a chargeable task as benefitting a particular bargaining unit; that, as CWA represents 2400 bargaining units, unit-by-unit accounting would require dividing chargeable expenditures into an equal number of categories; that a presently unknown "formula" would have to be devised to accomplish the task; and that the accounting cost incurred would be an unreasonable burden. While I have sympathy for such arguments, it must be pointed out that CWA's current allocation procedure appears to have been instituted on its own volition presumably with complete cognizance of a potential challenge and that, as noted by the Second Circuit Court of Appeals in *Andrews v. Education Association of Cheshire*, 829 F.2d 335 (2d Cir. 1987), "excessive cost cannot form the basis for allowing the union . . . to avoid [the] requirement that the procedures used by the union to allocate bargaining and administrative costs be carefully tailored to minimize the intrusion on the nonmembers' rights." Id. at 339.[16] In these circumstances, I believe that, by relying upon a single percentage reduction, determined on a nationwide basis, for objecting nonmembers, Respondents' multiple industry allocation system fails the *Beck*, supra, requirement, that, under the Act, an objecting nonmember may only be charged for those expenditures necessary for the labor organization's performance of the duties of an exclusive bargaining representative, and that, therefore, Respondents have acted in violation of Section 8(b)(1)(A) of the Act with regard to the objecting nonmembers herein involved.

CONCLUSIONS OF LAW

1. Pacific Bell, Nevada Bell, AT&T Information Systems, New York Telephone Company, Bell Telephone Company of Pennsylvania, American Telephone and Telegraph Communications, Ohio Bell Telephone Company, Chicago Tribune Company, The Pulitzer Publishing Company d/b/a The St. Louis Post-Dispatch, GTE California Incorporated, U.S. West Communications, and Wisconsin Bell, Inc. are employers engaged in commerce and in industries affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondents are labor organizations within the meaning of Section 2(5) of the Act.

3. Since 1986, Respondents have breached their duty of fair representation in violation of Section 8(b)(1)(A) of the Act by, after breaking down the agency fee, charged to the objecting nonmembers named in the amended consolidated complaint, into representational and nonrepresentational expenses, allocating chargeable expenses on a national rather than unit-by-unit basis on the disclosure statements given to said individuals.

4. Respondents did not act in violation of Section 8(b)(1)(A) of the Act by charging objecting nonmembers for representational expenditures not directly attributable to their own bargaining units.

5. The aforementioned unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having determined that Respondents engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act by allocating representational expenses, charged to the objecting nonmembers named in the amended consolidated complaint, on a national rather than unit-by-unit basis, I shall order Respondents to cease and desist from CWA's present national cost allocation procedure and to take certain affirmative actions designed to effectuate the purposes and

[16] While Andrews was decided upon First Amendment principles and such reasoning may not be applicable to cases decided under the Act, I believe the court's logic is equally applicable herein.

policies of the Act. As I believe Respondent's duty of fair representation owed to each of the objecting nonmembers, named in the amended consolidated complaint, includes allocating the percentage of each nonmember's agency fee, expended on representational matters, on a unit-by-unit basis, I shall recommend that Respondents be ordered to recalculate the amount of agency fees, chargeable to each of the named objecting nonmembers, commencing in the year he or she initially objected to the payment of his or her agency fee for nonrepresentational activities, as alleged in the amended consolidated complaint, and continuing for each subsequent year he or she filed such an objection until the present, by reallocating chargeable representational expenditures on a unit-by-unit basis for the years in question. Thereupon, each named objecting nonmember should be reimbursed for any excess fees paid to Respondents, with interest calculated as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), for the years in question. Finally, I shall recommend that Respondents be ordered to post notices, setting forth their obligations.

On the foregoing findings, conclusions, and on the entire record, and pursuant to the provisions of Section 10(c) of the Act, I issue the following[17]

ORDER

Respondents (Respondent CWA; Respondent CWA Locals 1101, 1104, 1113, 1114, 1123, 13000, 4322, 4340, 4603, 7640, 9403, 9510, 9573, and 9588; Respondent Typographical Union; and Respondent Mailers Union), their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Breaching their duty of fair representation by, after breaking down the agency fee, charged to objecting nonmembers, into representational and nonrepresentational expenses, allocating chargeable expenses on a national rather than unit-by-unit basis on the disclosure statements given to said individuals.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recalculating the amount of agency fees, chargeable to each of the objecting nonmembers, named in the amended consolidated complaint, commencing in the year he or she initially objected to the payment of his or her agency fee for nonrepresentational activities, as alleged in the amended consolidated complaint, and continuing for each subsequent year he or she filed such an objection until the present, by reallocating chargeable representational expenditures on a unit-by-unit basis for the years in question. Thereupon, each of the objecting nonmembers shall be reimbursed, with interest, for any excessive fees paid to Respondents for the years in question.

(b) Preserve and, upon request, make available to Board agents, for examination and copying, all records necessary to verify the amounts of reimbursement due to each of the objecting nonmembers as set forth above.

(c) Post at the meeting hall and/or office of Respondent CWA, each of the Respondent CWA Locals, Respondent Typographical Workers, and Respondent Mailers, copies of the attached notice, marked "Appendix."[18] Copies of the notice, on forms furnished by the Regional Director of Region 20, after being signed by the authorized agent for the Respondents, shall be posted by each of the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to members and nonmembers are customarily posted. Reasonable steps shall be taken by each of the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In addition, sufficient notices shall be made available to each employer, set forth in the amended consolidated complaint, for posting at the work location of each of the named objecting nonmembers—if said employers are so willing.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT SHALL BE FURTHER ORDERED that the amended consolidated complaint, insofar as it alleges that Respondents violated Section 8(b)(1)(A) of the Act by charging objecting nonmembers for representational expenditures not directly attributable to their own bargaining units, be dismissed.

[17] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS AND NONMEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT breach our duty of fair representation by, after breaking down the agency fee, charged to objecting nonmembers, into representational and nonrepresentational expenditures, allocate chargeable expenses on a national rather than unit-by-unit basis on the disclosure statements, which we give to objecting nonmembers.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse, with interest, the objecting nonmembers, set forth in the attachment, for any excess fees paid to us in the years, at issue, in which objections were filed to their agency fee payments.

COMMUNICATION WORKERS OF AMERICA,
AFL–CIO

ATTACHMENT

Accetta, Eileen	Lucken, John
Anderson, Floyd	Macko, John
Brown, Janet	Marcin, Mark
Browne, Robert P.	Mayer, Carolyn
Cabot, James	McClain, David
Caparoni, James	Mechling, Rick A.
Connie, Albert	Miller, Daniel
Corey, Janet	O'Toole, Vivienne
DiGiammo, Andy	Palla, Edward
Dilly, Diane	Peck, William E.
Dow, Irene	Pedrick, Wesley
Dow, Ross A.	Peterson, Greg
Elton, Harry	Pogras, James A.
Faison, Erskine	Posey, Ernest
Falvo, Roger	Praul, Charles
Finerty, Michael	Ritter, James S.
Fitzpatrick, S. K.	Scott, Ida
Foley, James	Shaw, Hoyt
Glasscock, Sandra	Shaw, Jeanene
Golaszewski, Robert	Stewart, Pauline W.
Goodreau, John	Stork, Michael F.
Hettick, Lynne P.	Taylor, Kendall
Hill, Ednoa	Utt, Jesse
Hurley, Terrence	Vanderhayden, Laura
Johnson, Dennis L.	Vilensky, Janice
Kase, Charleton	Vilensky, Lanny
Kline, Richard D.	Walp, Diane
Kollman, Fridrich	White, Michele
Krom, Robert	Willaims, Thomas
Lawrence, Timothy L.	Zawatske, Richard W.

ORDER

On May 13 and June 15, 1992, I approved unilateral settlement agreements in the above-captioned matters with the proviso that, if any of the objecting nonmembers, named in the amended consolidated complaint, disputed the Regional Director of Region 20's reimbursement calculations or the amount of reimbursement, he or she should file a proper motion and I would consider the matter. A time limit of April 26 was set for the filing of such motions, and *only* the Charging Party in Case 20–CB–8752–2, James S. Ritter, has requested that I review the reimbursement in his case, as calculated by the aforementioned Regional Director. I have done so, and it is apparent that Ritter's arguments, with regard to the reimbursement calculation, merely reiterate his previous objections to the settlement agreement itself—that there is no remedy for assertedly unlawful conduct, which occurred more than 6 months prior to the filing of his underlying unfair labor practice charge on January 16, 1990. As I explained in my order, dated May 13, 1992, ". . . there can be no question herein but that, at all times material herein, [Ritter] has been an employee within the meaning of the Act, and I can see no valid reason why the [Section 10(b) statute of limitations] should not apply to him." Therefore, I find his objections to the calculation of his settlement reimbursement to be without merit. In the above circumstances, inasmuch as the time for the filing of objections has passed:

It is hereby ordered that the reimbursement amounts in the settlement agreements in the above-captioned matters are, and remain, as calculated by the Regional Director of Region 20.

ORDER REGARDING PROPOSED UNILATERAL SETTLEMENT AGREEMENTS

On April 15, 1992, Administrative Law Judge Burton Litvack telephonically opened the hearing in the above-captioned matters, with all parties represented by counsel except the Charging Party, James S. Ritter, an individual, in Case 20–CB–8752–2, who represented himself. All parties requested that Judge Litvack open the hearing in the manner so that 14 unilateral settlement agreements, General Counsel's Exhibits 3–16, could be received into the record and then be considered, by Judge Litvack, for approval or rejection. Each of the unilateral settlement agreements, with the exception of General Counsel's Exhibit 4, involving Case 20–CA–24168 and The Bell Telephone Company of Pennsylvania, contains four documents—the settlement agreement, a stipulation, a notice pertaining to the particular amended consolidated complaint paragraphs at issue, and a so-called "national notice" pertaining to paragraph E of the amended consolidated complaint and the common nationwide allegations contained therein. The settlement agreement in Case 20–CA–24168 contains only the settlement agreement and an attached notice. All parties understand and agree that, if approved by Judge Litvack, the unilateral settlement agreement in Case 20–CA–24168 would fully remedy and dispose of the unfair labor practice allegations therein and that, if approved, the remaining settlement agreements would resolve all of the unfair labor practice allegations in the remaining cases except the so-called "unit-by-unit" allegations contained in the above-noted paragraph E, issues which, all parties agree, necessitate litigation. Asserting that each of the proposed unilateral settlement agreements remedies the allegations of the amended consolidated complaint paragraph, to which it is addressed, counsel for the General Counsel argues that each should be approved by Judge Litvack. Likewise, counsel for The Bell Telephone Company of Pennsylvania, the respondent in Case 20–CA–24168, and counsel for Communications Workers of America (CWA) argue in favor of the approval of the settlement agreements. On the other hand, James S. Ritter, the Charging Party in Case 20–CB–8752–2; counsel for the Chicago Tribune Company (the Tribune), the Charging Party in Case 20–CB–8752–16, and counsel for the National Right To Work Legal Defense Foundation, Inc. (the Foundation), which represents the Charging Parties in the remaining cases, contend that Judge Litvack should reject the proposed unilateral settlement agreements for various reasons, which shall be set forth and considered later.

At the outset, there is no dispute that the basis of the instant amended consolidated complaint is the decision of the United States Supreme Court in *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), in which the Court concluded that Section 8(a)(3) of the National Labor Relations Act (the Act) and Section 2, Eleventh of the Railway Labor Act (the RLA) have "parallel purpose, structure, and language" and, therefore, should be construed "in the same manner," and, utilizing an earlier decision, *Machinists v. Street*, 367 U.S. 740 (1961), which involved Section 2, Eleventh of the RLA, as precedent, ruled that Section 8(a)(3) of the Act "authorizes the exaction of only those fees and dues necessary to 'performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues.'" Based upon *Beck* and Supreme Court precedent in cases involving the RLA and others con-

cerning public sector employees, on November 15, 1988, the General Counsel issued "Guidelines" as to how the office of the General Counsel would handle *Beck*-related unfair labor practice charges. The document forms the underlying rationale for the instant amended consolidated complaint.

Against the above-described background, with no other Supreme Court precedent, involving the Act, and no decisions of the National Labor Relations Board (the Board), on the *Beck* issues, we must consider the 14 proposed unilateral settlement agreements. Initially, it should be clear to all parties that the Board's longstanding policy is to encourage the settlement of unfair labor practice charges (*Nu-Aimco, Inc.*, 306 NLRB 978 (1992), and, in determining whether the purposes and the policies of the Act would be effectuated by approval of settlement agreements, the Board has developed certain standards including (1) whether the parties have agreed to be bound and the position taken by the General Counsel; (2) whether the settlement appears reasonable in light of the complaint allegations and the risks inherent in litigation; (3) whether there has been any coercion, fraud, or duress by any party in reaching the settlement; and (4) whether the respondent has a history of violations of the Act or of breaching settlement agreements. *Shine Building Maintenance*, 305 NLRB 478 (1991); *National Telephone Services*, 301 NLRB 1 (1991); *Independent Stave Co.*, 287 NLRB 740, 743 (1987). Herein, there is no dispute that the allegations of the amended consolidated complaint and the remedy provisions of the document are based upon the aforementioned "Guidelines" of the General Counsel in *Beck*-related cases and that, in those cases in which CWA and its local unions are the respondents, the language of both the national and local notices is framed in the terms of the allegation paragraphs of the amended consolidated complaint. Thus, the central requirement of the General Counsel's *Beck* "Guidelines" is the obligation of a labor organization, which has a union-security provision in a collective-bargaining agreement with an employer, to notify nonmembers that, during the past year, a stated percentage of funds was spent in nonrepresentational activities; that nonmembers can object to having their union-security payments spent on such activities; that objectors will only be charged for representational activities; and that, if they object, nonmembers will be provided with detailed information concerning the breakdown between representational and nonrepresentational expenditures. According to the General Counsel's *Beck* theory, the notice must be given once a year to nonmembers, to nonmember new employees who join the unit after the notice, and to employees who resign their memberships in the labor organization. It is further postulated that, once a nonmember objects, the labor organization must refrain from charging him for nonrepresentational functions.

Analysis of the amended consolidated complaint discloses that the allegations of paragraphs E through R concern such allegedly unlawful conduct as failing to give the required *Beck* notice to nonmembers; failing to give a properly worded *Beck* notice to nonmember employees, failing to honor resignations from the labor organization and continuing to assess full membership dues amounts from resigning employees, who have subsequently filed *Beck* objections; failing to recognize and grant objector status to nonmember employees who have, in fact, submitted *Beck* objections and continuing to assess them for full membership dues; demanding that employers honor contractual union-security clauses and terminate nonmember employees who have either not been given a proper *Beck* notice or who have submitted *Beck* objections and are not paying full membership dues; and not providing to nonmembers, who have filed *Beck* objections, with sufficient breakdowns of representational and nonrepresentational expenses. In remedying these unfair labor practices, the national and local notices, attached to the various proffered unilateral settlement agreements, involving CWA, contain provisions which track the language of the applicable amended consolidated complaint paragraphs and which state CWA's commitment to desist from engaging in any like future conduct including to not fail to give nonmember employees proper *Beck* disclosure notices, to not refuse to permit nonmember employees to raise *Beck* objections, to not refuse to honor such objections when filed, and to no longer demand that employers terminate employees who fail to pay full union-security payments at times when the nonmember employees were not afforded their full rights under *Beck*. Further, CWA has agreed, where applicable, to provide for the reimbursement of those portions of nonmember employees' union-security fees, which were not spent on representational activities in the years in which the nonmembers were *Beck* objectors, and, besides agreeing to post copies of the national and applicable local notices at its national office, at the offices of the respondent local unions, and, wherever possible, at the worksites of named employees, CWA has committed to the publishing of a new *Beck* notice, which, apparently, conforms in all aspects to the requirements of the General Counsel, in the *CWA News*, copies of which are mailed to each employee for whom CWA is the statutory bargaining representative.

The foregoing has convinced Judge Litvack that the proffered unilateral settlement agreements substantially remedy the unfair labor practice allegations of the amended consolidated complaint. In addition, other factors tend to buttress the conclusion that the settlement agreements satisfy the Board's standards for approval. First, there is a substantial possibility that the General Counsel will not entirely succeed in litigation of his unfair labor practice allegations. Thus, as the General Counsel pointed out in the aforementioned *Beck* "Guidelines," the cases, upon which reliance has been placed for formulation of the theory underlying the amended consolidated complaint, are ones involving the RLA or public sector employees and having constitutional bases. In cases, such as *Ellis v. Railway Clerks*, 466 U.S. 435 (1984), and *Chicago Teachers Union Local No. 1 v. Hudson*, 475 U.S. 292 (1986), the Court determined that present in each was the factor of "state action" so as to cause the involved labor organization's conduct to be subject to constitutional limitations. This matter is of crucial significance, for, absent state action, there would be no necessity for imposing the "heightened procedural safeguards" required when concerned with rights which are protected by the Constitution, and a labor organization's obligation, in matters involving *Beck* rights, only would be to meet the less stringent duty of fair representation standard of *Vaca v. Sipes*, 386 U.S. 171 (1967); *Price v. International Union, UAW*, 927 F.2d 88, 91 (2d Cir. 1991). In *Beck*, supra, the Supreme Court specifically declined to consider the issue, and two circuit courts of appeals have, since then, concluded that no state action is involved with the acts of labor organizations, under Section

8(a)(3) of the Act, and that, therefore, the procedures utilized to enforce nonmembers' *Beck* rights need only not be arbitrary, discriminatory, or implemented in bad faith in order to be found lawful. *Price*, supra; *Abrams v. Communications Workers*, 702 F.Supp. 920 (D.D.C. 1988), affd. mem. 884 F.2d 628 (D.C. Cir. 1989). Accordingly, given the novel legal concepts involved and the lack of clearly applicable case precedent, that the General Counsel would prevail in the instant litigation is not free from doubt.

Next, in a related factor, it must be noted that CWA entered into the above-described settlement agreements prior to the commencement of the hearing and at a time when its legal liability could not be said to be free from doubt and, by doing so, obviously waived its right to raise legal arguments, such as stated above, and to fully litigate the unfair labor practice allegations. Whatever CWA's motivation for entering into these settlement agreements, the fact that it has done so, in the above circumstances, militates towards acceptance of the settlements. Moreover, of course, the General Counsel recommends approval for the reasons stated above. Further, there has been no assertion of fraud, coercion, or duress by any party in reaching agreement on the proffered settlement agreements, and there has been no assertion that CWA has a history of breaching settlement agreements.

Turning to the settlement agreement in Case 20–CA–24168, in which The Bell Telephone Company of Pennsylvania is the named respondent, the same factors, which militate toward acceptance of the settlement agreements, in which CWA is the named respondent, exist. Thus, the amended consolidated complaint allegations are that the former, herein called Pennsylvania Bell, continued to deduct an employee's full membership dues from his wages and remit the monies to CWA even after the employee had resigned his union membership, thereby revoking a previously executed dues deduction authorization. Pursuant to the terms of the settlement agreement and attached notice, which will be posted in accord with standard Board procedures, Pennsylvania Bell has agreed to no longer engage in such conduct in the future and to notify the employee, in writing, of the commitment. While there exists no make-whole provision in the settlement agreement, it is noted that, in the companion CWA settlement agreement, General Counsel's Exhibit 3, the labor organization has agreed to accept liability for reimbursing to the employee that portion of his union-security payment spent on nonrepresentational activities. Furthermore, there can be no doubt that the primary theory of liability concerns CWA rather than Pennsylvania Bell, and, in light of the arguably tenuous nature of the General Counsel's legal theory, there exists doubt that he can prevail as to allegations that Pennsylvania Bell's above-described conduct was violative of Section 8(a)(1) and (3) of the Act. In these circumstances, it must be noted that Pennsylvania Bell entered into the proffered settlement agreement with the General Counsel prior to litigation and that the General Counsel recommends approval. Finally, as above, there exists no assertion of fraud or duress or that Pennsylvania Bell has acted in breach of prior Board settlements.

The Tribune and the Foundation have filed similar general objections to approval of the CWA settlement agreements, and the Foundation and James S. Ritter have stated specific objections to the terms of some of the CWA's settlements. Initially, counsel for the Tribune and counsel for the Foundation contend that the proposed settlement agreements do not fully remedy CWA's unlawful conduct inasmuch as "relief" has only been provided for those financial core members specifically mentioned in the amended consolidated complaint and not for an unspecified number of "similarly situated" employees, who may have been harmed by CWA's alleged unfair labor practices. As explained by counsel for the Tribune, the proposed national notice expressly acknowledges that certain expenses, which had previously been portrayed as representational by CWA, are, in fact, nonrepresentational, and financial core employees, in the past, may have detrimentally relied on these misrepresentations in deciding whether or not to become *Beck* objectors. Both counsels assert that, while the scope of the "class" may be debatable, the existence of individuals similarly situated to those named in the amended consolidated complaint can not be doubted. In assessing the validity of counsels' contentions, it is crucial, at the outset, to understand that it is the General Counsel ". . . determines whether to issue a complaint and the theory on which it should proceed" and that ". . . a charging party cannot enlarge upon or change the General Counsel's theory." *Container Systems Corp. v. NLRB*, 521 F.2d 1166, 1170 (9th Cir. 1975); *Kimtruss Corp.*, 305 NLRB 710 (1991). Herein, according to counsel for the General Counsel, the fact that a remedy is being sought for only those financial core members named in the complaint reflects the theory of the General Counsel that financial core members have an affirmative obligation to file their *Beck* objections, through CWA's "established procedure," on a yearly basis, in order not to be obliged to tender full union-security monies and that, while CWA's current notice procedure is viewed as inadequate, such inadequacies are not "so serious" as to relieve financial core members of their responsibility to file *Beck* objections each year. As pointed out by counsel for the General Counsel, adopting the Charging Parties' contention, as described above, would, in effect, establish that CWA's notice procedures were so deficient as to have relieved all past and present financial core members of the obligation to object—a theory not supported by the amended consolidated complaint. Counsel for the Chicago Tribune and counsel for the Foundation point to the Board's decision in *Ironworkers Local 433 (Reynolds Electrical & Engineering Co.)*, 298 NLRB 35 (1990), as support for their argument that, contrary to counsel for the General Counsel, the Board will provide remedies for unnamed discriminatees "similarly situated" to those named in the complaint. However, both in *Ironworkers Local 433* and another cited decision, *Woodline Motor Freight*, 278 NLRB 1141 (1986), the Board provided relief for individuals, who were not named in the underlying complaints, only after finding that the allegations of the complaints were sufficiently broadly worded so as to include unnamed, similarly situated employees and that the respondents were on notice that the complaints were not limited to those discriminatees named therein. 298 NLRB 35, 36; 278 NLRB 1141, 1143 at fn. 6. The holdings were, thus, fully in accord with other Board decisions in which complaints were *not* construed so as to include unnamed discriminatees. *O'Neill, LTD*, 288 NLRB 1354, 1356 (1988); *TLI, Inc.*, 271 NLRB 798, 806 (1984); *Consolidated Casinos Corp.*, 266 NLRB 988 (1983). Herein, of course, the amended consolidated complaint allegations are narrowly drawn, specifying the individuals who were harmed by CWA's con-

duct, and the Charging Parties have long been on notice that the language should be construed narrowly. Finally, Judge Litvack notes that, while this contention of counsel for the Tribune and counsel for the Foundation may have some factual validity, for purposes of considering the proffered settlement agreements, the language of the amended consolidated complaint allegations and the underlying legal theory dictate for whom relief may be sought in settlement. In these circumstances, noting that the named objectors will receive reimbursement, the above-stated objection must be found to be without merit.

The Charging Parties' next general objection to the proffered unilateral CWA settlement agreements is based upon the contention that the remedies, obtained in the settlements, do not provide "full relief" for those financial core members named in the amended consolidated complaint. Thus, while the notices provide for reimbursement for the year in which *Beck* objections were raised, as well as in subsequent years in which there were *Beck* objections, as a practical matter, none of the named financial core members raised the objections in the years subsequent to the filing of the unfair labor practice charges herein and are not entitled to "post-complaint relief for 'related violations.'" As support for their argument that such relief is warranted, counsel for the Tribune and counsel for the Foundation cite to *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959). In that case, a Section 8(a)(1) and (5) unfair labor practice charge was filed with the Board, alleging a failure and refusal to bargain in good faith. Five months later, the employer granted a general wage increase to employees, and a subsequent complaint alleged both the bargaining and wage increase as unfair labor practices without the filing of a new or an amended unfair labor practice charge. The issue raised was whether or not the wage increase was properly included as a subject of the complaint, and the Supreme Court ruled that "whatever restrictions the requirements of a charge may be thought to place upon subsequent proceedings by the Board, we can find no warrant in the language or purposes of the Act for saying that it precludes the Board from dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board." Id. at 306–307. It seems to Judge Litvack that the salient point of the foregoing holding is that the subsequent conduct must itself constitute an unfair labor practice in order for such to be a subject of a complaint and to require relief. As understood by Judge Litvack, one aspect of the General Counsel's theory, underlying the amended consolidated complaint, is that a financial core member bears the burden of objecting to the expenditure of funds for nonrepresentational purposes in any given year, and, if he fails to do so, the labor organization may collect full union-security monies from the individual that year. It follows, as pointed out by counsel for the General Counsel, that, if a financial core member failed to object in any year subsequent to that alleged in the amended consolidated complaint, pursuant to the underlying theory, he would not be considered a *Beck* objector during the year, and CWA has not committed an unfair labor practice by not adhering to the *Beck* procedures during the year. It is quite apparent that, to find merit to the Charging Parties' objection, would necessitate establishing an underlying theory different from that of the General Counsel with regard to the establishing of unfair labor practices herein. However, I have previously concluded that the selection of the theory, underlying the instant amended consolidated complaint, is exclusively within the purview of the General Counsel (*Container System Corp.*, supra; *Kimtruss Corp.*, supra), and the Charging Parties may not require him to alter it.[1] Moreover, while it is not inconceivable that the Charging Parties' view of the law may be correct, Judge Litvack is of the view that, at this point in the proceeding, his function is merely to establish whether the settlement agreements adequately remedy the allegations of the amended consolidated complaint and not to weigh the merits of the underlying legal theory. In this regard, it must be noted that the language of the settlement agreements provide for reimbursement in the years in which nonmembers filed *Beck* objections and CWA followed improper *Beck* procedures and would remedy such conduct in subsequent years *if* proper *Beck* objections were filed. Based upon the foregoing, this objection to the proposed settlement agreements must be rejected.

The Charging Parties next object to the inclusion of nonadmission clauses in the proposed settlement agreements. In arguing against acceptance, counsel for the Tribune asserts that inclusion of such language is inappropriate herein inasmuch as the alleged unfair labor practices are "particularly egregious" and as CWA has continued to infringe upon the rights of nonmembers since the *Beck*, supra, decision, to which it as a party, and counsel for the Foundation contends that the nonadmissions language is "unwarranted" when, as herein, perhaps many thousands of identical unfair labor practices, as herein involved, are committed by CWA every year and the latter has exhibited an "established proclivity" for the allegedly unlawful conduct herein involved. Putting aside counsels' hyperbole, the facts are that not only, as stated above, is the theory underlying the amended consolidated complaint open to question but also counsel for the General Counsel stated, in their brief in support of acceptance of the settlement agreements, that the General Counsel does not view the inadequacies of CWA's annual *Beck* notice as being "so serious." Moreover, contrary to the assertions and the conjecture, there just has been no showing that CWA is a chronic violator of the Act or has acted in breach of settlement agreements in the past. In the foregoing circumstances, noting that the terms of the settlement seem to adequately remedy the alleged unfair labor practices, it would be a proper exercise of discretion to accept the proposed settlements with the inclusion of the nonadmission clauses. *Woodworkers Local 3-433 (Kimtruss Corp.)*, 304 NLRB 1, 1–2 (1991); *National Telephone Services*, supra, 301 NLRB 1 at 4.

Both counsel for the Charging Parties and James S. Ritter next object to the proposed settlements on grounds that, while those, with CWA as the named respondent, provide for a make-whole remedy and the notices specify what year an

[1] Counsel for the Foundation points to language in a footnote in *Railway Clerks v. Allen*, 373 U.S. 113 (1963), as support for its contention regarding the inadequacy of the underlying legal theory. Referring to the timing of an objection, the Supreme Court said, "Respondents first made known their objection to the petitioners' political expenditures in their complaint filed in this action; however, this was early enough." Id. at 119 at fn. 6. From this, counsel asserts that there is no difference between the filing of a meritorious complaint in court and a meritorious charge before the Board and apparently that additional acts need not be undertaken in order to perfect further *Beck* violations.

objecting nonmember will be made whole for monies, which were not spent on representational activities, the determination as to the precise amounts owed to each named objector apparently would be within the complete discretion of the Regional Director of Region 20 with the parties having no right of review, there is no stated formula or criteria to aid in establishing the parameters in which the Regional Director will make his determinations, and there is no stated mechanism for the resolution of disputes. Arguing in support of the settlement agreements, counsel for the General Counsel argues that the make-whole determination procedure will be in accord with the Board's Rules and Regulations and the Casehandling Manual, that Regional compliance personnel have expertise in the mechanics of the compliance process, that the Charging Parties possess all the information as to the "factors" to be considered in computing the dollar amounts, and that the General Counsel is challenging CWA's characterization of its expenses rather than the labor organization's calculations of the amounts spent in any given category. It is, of course, the norm in unfair labor practice proceedings to have the matter of backpay resolved during the compliance stage, and, even when a matter is resolved by settlement rather than after the issuance of a decision, it is not unusual to leave the amount of backpay unspecified, requiring such to be determined during the compliance process. However, while backpay is normally a function of calculating gross earnings and subtracting interim earnings and reimbursement usually involves a simple calculation, Judge Litvack is not, at all, sanguine that the Regional Director's calculations will be as simple and straightforward as asserted by counsel for the General Counsel. We are dealing with an uncertain area of law herein, and CWA's expenses, in any given category, may not be as susceptible to simple calculation as claimed. Further, as argued by the Charging Parties, it, indeed, may be the case that the Regional Director could be forced to rely upon presumptions and/or percentages if exact expense amounts are not available. Moreover, one faces the reality that, unlike after a hearing and decision by an administrative law judge and the Board, compliance after a settlement agreement does not require a backpay hearing for the resolution of disputes. Thus, Judge Litvack understands and is sympathetic towards the position of the Charging Parties with regard to leaving the matter of the make-whole remedies to the unfettered discretion of the Regional Director of Region 20. However, while unsatisfactory, neither the absence of stated reimbursement amounts nor the make-whole remedy calculation procedure present sufficient grounds for rejecting the proposed settlement agreements. Rather, permitting any of the named objectors to protest the calculation of, or the amount of, his union-security money reimbursement to Judge Litvack will ensure that any of the above individuals will have a mechanism to resolve disputes. Accordingly, with the stated proviso, the objection is not deemed sufficient to block acceptance of the proposed settlement agreements.

Counsel for the Foundation further objects to approval of the CWA settlement agreements on grounds that the General Counsel has not been consistent in seeking remedies in indistinguishable situations and that, given the nationwide breadth of the alleged unfair labor practices, a correspondingly broad remedy is appropriate, including posting of notices on all workplace bulletin boards where CWA has posting privileges and represents employees under the Act. As to the former objection, the simple answer is that counsel should argue this point to the General Counsel and not to Judge Litvack, who is concerned only with the above-captioned consolidated cases and has no authority as to any other proceeding. With regard to the latter objection, counsel for the General Counsel points out that not only will signed copies of the national and local notices be posted in CWA's national office and in the offices of all affiliated Local unions, involved herein, but also, to the extent CWA has posting privileges, the notices will be posted at the worksites in which named employees work. If CWA does not have posting privileges at a worksite, permission will be sought to allow the posting. In addition, copies of the CWA's new *Beck* notice, which fully complies with the dictates of the General Counsel, will be published in the *CWA News*, the labor organization's internal publication, which is mailed to the home of every employee for whom CWA is the statutory bargaining representative. Finally, new employees, who have not been given a copy of the new *Beck* notice, will be provided with a separate copy. It is the view of Judge Litvack that the notice posting herein is sufficiently broad to remedy the breadth of the instant allegations and fully comports with Board standards. Moreover, it is noted that CWA has committed to making available the language of its revised *Beck* notice to every employee whom it represents. While, arguably, Judge Litvack may have fashioned a broader notice-posting remedy had these allegations gone through the hearing process, it must be borne in mind that settlement agreements represent compromise prior to final litigation and the notice posting does comport with Board standards. Accordingly, Judge Litvack finds these objections to be without merit.

Turning to specific objections to particular settlement agreements, James S. Ritter argues that, in Case 20–CB–8752–2, the proposed monetary relief due him is insufficient as CWA's unfair labor practices, with regard to him, began earlier than 6 months prior to the date on which he filed the original unfair labor practice charge in the case—January 16, 1990—and were of a continuing nature. In so contending, he asserts that the Section 10(b) of the Act statute of limitations period does not apply to him. Contrary to Ritter, there can be no question herein but that, at all times material herein, he has been an employee within the meaning of the Act, and I can see no valid reason why the tenets of Section 10(b) should not apply to him. Moreover, consistent with the underlying theory of the amended consolidated complaint, Ritter's make-whole remedy covers the year in which he filed *Beck* objections and any subsequent year in which he did so. Accordingly, Judge Litvack can find no reason for rejecting the above settlement agreement on the stated grounds.

Counsel for the Foundation objects to several of the individual settlement agreements. First, as to that involving Pennsylvania Bell, Case 20–CA–24168, counsel objects to its approval on grounds that there is nothing in the notice requiring joint and several liability for monies which were wrongfully deducted from Michael Stork's wages and transmitted to, and accepted by, CWA. Contrary to counsel, I have previously stated that CWA, in a companion settlement agreement, General Counsel's Exhibit 3, has committed to reimburse Stork for all union-security monies received from him for all but representational activities. In these circumstances, as primary liability lies with CWA and as, from a practical standpoint, there exists no reason to make Penn-

sylvania Bell jointly and severally liable when CWA is financially able to make whole Stork and has committed to do so, I find no merit to this objection. Counsel next objects to the settlement agreement in Case 20–CB–8752–5, as such applies to Eileen Accetta, on grounds that it does not require CWA to refrain from charging employees for nonrepresentational costs in the future and does not require CWA to cease making threats, short of discharge, which are designed to exact more from employees than representational costs. Contrary to counsel, the settlement agreement provides monetary relief for Accetta in accord with the alleged unlawful conduct, and counsel for the General Counsel points out that CWA's new national *Beck* procedure does provide for an "advanced reduction" to an objector of dues monies, which previously CWA had classified as representational but which, pursuant to the settlement agreement, will henceforth be classified as nonrepresentational. Furthermore, the amended consolidated complaint alleges that CWA unlawfully threatened Accetta with discharge, and, of course, the settlement agreement provides a remedy for the threat. No lesser threat is alleged and no corresponding remedy is required. Accordingly, this objection is found to be without merit.

Counsel for the Foundation next objects to the settlement involving James M. Cabot, Case 20–CB–8752–10, pointing out that the alleged unfair labor practice concerned the failure of CWA to recognize his membership resignation and failure to give him any *Beck* notice, at all. Accordingly, counsel contends that such is the "equivalent" of having no *Beck* plan and that, therefore, "they have no obligation to pay representational fees until *Beck* compliance is achieved." While, as support for his argument, counsel points to the remedy in another Board case, such is, apparently, at odds with the General Counsel's theory underlying the amended consolidated complaint in these cases. Thus, according to counsel for the General Counsel, the significant difference between the cited case and the instant cases is that CWA does have a *Beck* procedure, however flawed, in place while the Union, in the cited case, did not. Counsel points out that Cabot and other employees were aware of the *Beck* policy as they filed objections to the payment of union-security monies for nonrepresentational activities. Thus, in accord with the General Counsel's theory, Cabot should receive reimbursement only for that part of his union-security payment which covered nonrepresentational activities. Such is the General Counsel's underlying theory, and one must conclude that the settlement agreement substantially remedies the alleged unfair labor practice. As stated above, the General Counsel controls the theory of the amended consolidated complaint, and counsel for the Foundation is bound by it. Furthermore, as what is involved is a settlement of the unfair labor practice allegations, Judge Litvack is not authorized at this stage in the proceeding to question its validity. Accordingly, counsel's objection to the settlement agreement, pertaining to James Cabot, is deemed without merit.

Counsel for the Foundation next objects to the settlement agreement involving Diane Dilly, Case 20–CB–8752–11, on grounds, as with Eileen Accetta, that the notice is not directed towards threats other than discharge threats, that there is nothing to permit employees, such as Dilly, to pay less than full fees while challenges are pending, that the settlement does not provide that CWA, in the future, will not demand more than fees covering its representational costs, and, other than legislative lobbying expenses, no other nonrepresentational activities are mentioned. According to counsel for the General Counsel, the underlying theory of the amended consolidated complaint paragraphs, regarding Dilly, is that CWA's allegedly unlawful act was the threat of discharge for failure to pay union-security monies, which included nonrepresentational costs, and not the act of refusing to permit her to pay for only what she regards as monies, covering representational expenses, while a challenge is pending over such. While counsel for the General Counsel's explanation of the underlying theory was clear, Judge Litvack notes that paragraph k6 of the amended consolidated complaint specifies that the threat to cause Dilly's discharge was "because of her activities described above in [the two preceding paragraphs]," one of which concerned her monthly tenders to the labor organization of "50 percent of full union security monies." The plain meaning of the amended consolidated complaint paragraphs is that the discharge threat, based on what Dilly did, is allegedly unlawful. Therefore, one would expect, in a settlement agreement remedying the alleged unfair labor practice, notice language providing for CWA's commitment not to threaten the discharge of employees who act, as did Dilly. In fact, such a provision does appear in the attached notice of General Counsel's Exhibit 11, but it has been inexplicably crossed out. Further, if the allegedly violative act, involving Dilly, was merely a threat of discharge because she failed to pay union-security monies alleged to include nonrepresentational expenses, the allegation paragraphs do not so read, nor is such explicitly remedied in the settlement agreement. In these circumstances, I find merit to counsel's objection to General Counsel's Exhibit 11.

Counsel for the Foundation objects to the settlement agreement in Case 20–CB–8752–13, involving Robert Browne, on grounds that the settlement remedies allegedly unlawful pre-September 1988 conduct at a time when CWA maintained a so-called "charge and rebate" procedure, pursuant to which it exacted union-security payments in excess of what was necessary to cover representational expenses, and that, accordingly, relief should include a full refunding of the above payments. As explained by counsel for the General Counsel, the underlying theory draws a distinction between a situation where there is no *Beck* plan and one in which, however flawed, a *Beck* system is in place and would require the labor organization, which utilizes a flawed procedure, to collect only "what are properly characterized as representational monies." As stated above, as such is the theory, upon which the unfair labor practice charges, involving Robert Browne, are based, counsel may not seek to enlarge upon them, and Judge Litvack's sole responsibility, at this point, is to determine if the settlement agreement substantially remedies the allegations and not to question the merit of the General Counsel's theory. Accordingly, as counsel for the Foundation's objection seems clearly to question the underlying legal theory, it can not be sustained and is rejected.

Counsel for the Foundation next questions the settlement agreement in Case 20–CB–8752–17, involving Jack Luchen, on grounds that the agreement provides no remedy for what counsel considers to be an unlawful union-security clause. Recognizing that the amended consolidated complaint allegations, pertaining to this unfair labor practice charge, do not allege an unlawful union-security clause, counsel suggests that the amended consolidated complaint be amended to in-

clude such an allegation. This objection is without merit. Neither the underlying unfair labor practice charge nor the amended consolidated complaint contain the suggested allegation. If counsel felt the union-security clause involved in this particular unfair labor practice charge was invalid, he should have included the allegation in the unfair labor practice charge or filed an amended charge. No remedy can be provided without an allegation of unlawful conduct. The next settlement agreement, to which counsel for the Foundation objects, is in Case 20–CB–8752–20, involving Floyd Anderson. As to this counsel objects on grounds that, as the unfair labor practice allegation is that of CWA failing to acknowledge employees' right to resign, the monetary relief should be full reimbursement of union-security monies, as if no *Beck* plan was in place. For reasons discussed above with regard to the settlement agreements in Cases 20–CB–8752–10 and 20–CB–8752–13, I find this objection to be without merit and is rejected. Finally, while counsel for the Foundation has also objected to the settlement agreement in Case 20–CB–7726 on grounds that such does not include a remedy for named objector Michelle White, I shall deny it as a remedy has been provided for White in the settlement agreement, which has been received as General Counsel's Exhibit 10, involving the New York Telephone Company. Accordingly, based upon the foregoing:

It is hereby ordered that the settlement agreement in Case 20–CA–24168 be, and the same hereby is, approved; that Case 20–CA–24168 be, and the same hereby is, severed from the remainder of the above-captioned matters and remanded to the Regional Director of Region 20 for the purpose of compliance; and that, upon completion of compliance, counsel for the General Counsel file, with Administrative Law Judge Burton Litvack, a proper motion, requesting that the underlying amended consolidated complaint allegations be dismissed and the hearing, in the matter, closed.

IT IS HEREBY FURTHER ORDERED that the settlement agreement in Case 20–CB–8752–11 be, and the same hereby is, rejected.

IT IS HEREBY FURTHER ORDERED that the settlement agreements in the remainder of the above-captioned matters, received in evidence as General Counsel's Exhibits 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, and 16, be, and the same hereby are, approved; that the above-captioned matters be, and the same hereby are, remanded to the Regional Director of Region 20 for the purpose of compliance with the proviso that all parties are satisfied as to the monetary amounts which CWA shall reimburse to each named financial core member. If any disputes arise as to the amounts of money to be reimbursed to any named individuals, upon proper motion to Judge Litvack, the latter shall consider the matters, give each party an opportunity to present argument as to what it considers to be the proper calculations and the proper make-whole amounts, and, if need be, set the matters for hearing limited to the reimbursement issue; and that, upon compliance, counsel for the General Counsel file with Judge Litvack a proper motion requesting that the underlying amended consolidated complaint be dismissed and the hearing in the matters be closed.